

Regular Session, 1999

SENATE BILL NO. 128

BY SENATOR DEAN

HEALTH CARE. Authorizes prescribing lethal medication for a qualified dying patient upon his written request. (1/1/00)

1 AN ACT

2 To enact Part XXIV-C of Chapter 5 of Title 40 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 40:1299.64.21 through
4 1299.64.36, and to amend and reenact R.S. 14:32.12(C), relative to
5 responding to the request of a person suffering from terminal disease
6 for assistance in ending his life; to define terms; to provide for the right
7 of such person to request and obtain a prescription to end his life; to
8 provide for the form of the written request and for the procedure for
9 executing the written request; to provide for the right to rescind the
10 request; to provide for a waiting period; to provide for the effect of the
11 written request on wills, contracts, insurance policies and annuity
12 policies; to provide for immunities and penalties; to provide relative to
13 the crime of and penalty for criminal assistance to suicide; and to
14 provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Part XXIV-C of Chapter 5 of Title 40 of the Louisiana

Revised Statutes of 1950, comprised of R.S. 40:1299.64.21 through 1299.64.36, is hereby enacted to read as follows:

PART XXIV-C. DEATH WITH DIGNITY LAW

Part XXIV-C is all proposed new law.

§1299.64.21. Short title

R.S. 40:1299.64.21 is all proposed new law.

This Part shall be known as and may be cited as the "Death With Dignity Law."

§1299.64.22. Legislative findings, declarations, and intentions

R.S. 40:1299.64.22 is all proposed new law.

A. Findings. (1) The legislature finds that all persons suffering from terminal disease have the fundamental right to request and obtain a prescription to end his life in a humane and dignified manner.

(2) The legislature further finds that denying terminally ill persons the right to request and obtain a prescription to end his life may cause loss of individual and personal dignity for the person.

B. Declaration. In order that the rights of such a person may be respected, the legislature hereby declares that the laws of the state of Louisiana shall recognize the right of such a person to request and obtain a prescription to end his life in a humane and dignified manner.

C. Intentions. (1) The legislature intends that the provisions of this Part are permissive and voluntary.

(2) The legislature intends that nothing in this Part shall be construed to require the making of a declaration pursuant to this Part.

§1299.64.23. Definitions

R.S. 40:1299.64.23 is all proposed new law.

As used in this Part, the following words shall have the

meanings ascribed to them unless the context clearly requires otherwise:

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(4) "Counseling" means a consultation between a state licensed psychiatrist or psychologist and a patient for the purpose of determining whether the patient is suffering from a psychiatric or psychological disorder, or depression causing impaired judgment.

(5) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or practice of a profession, and includes a health care facility which is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business.

(6) "Incapable" means that in the opinion of a court or in the opinion of a patient's attending physician or consulting physician, a patient lacks the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available. "Capable" means not incapable.

(7) "Informed decision" means a decision by a qualified patient,

1 to request and obtain a prescription to end his life in a humane and
2 dignified manner, that is based on an appreciation of the relevant facts
3 and after being fully informed by the attending physician of all of the
4 following:

5 (a) His medical diagnosis.

6 (b) His prognosis.

7 (c) The potential risks associated with taking the medication to
8 be prescribed.

9 (d) The probable result of taking the medication to be
10 prescribed.

11 (e) The feasible alternatives, including, but not limited to,
12 comfort care, hospice care, and pain control.

13 (8) "Medically confirmed" means the professional opinion of
14 the attending physician has been confirmed by a consulting physician
15 who has examined the patient and the patient's relevant medical
16 records.

17 (9) "Patient" means a person who is under the care of a
18 physician.

19 (10) "Physician" means a doctor of medicine or osteopathy
20 licensed to practice medicine by the Louisiana State Board of Medical
21 Examiners.

22 (11) "Qualified patient" means a capable adult who is a resident
23 of Louisiana and has satisfied the requirements of this Part in order to
24 obtain a prescription for medication to end his life in a humane and
25 dignified manner.

26 (12) "Terminal disease" means an incurable and irreversible
27 disease that has been medically confirmed and is likely, based on

1 reasonable medical judgment, to produce death within six months.

2 §1299.64.24. Patient's request for medication to end his life

3 **R.S. 40:1299.64.24 is all proposed new law.**

4 A. An adult who is capable, is a resident of Louisiana, and has
5 been determined by the attending physician and consulting physician
6 to be suffering from a terminal disease, and who has voluntarily
7 expressed his wish to die, may make a written request for medication
8 for the purpose of ending his life in a humane and dignified manner in
9 accordance with this Part. In order to receive a prescription for
10 medication to end his life in a humane and dignified manner, a
11 qualified patient shall have made an oral request and a written request,
12 and reiterate the oral request to his attending physician no less than
13 fifteen days after making the initial oral request. At the time the
14 qualified patient makes his second oral request, the attending physician
15 shall offer the patient an opportunity to rescind the request.

16 B. A valid request for medication under this Part shall be in
17 substantially the form described in R.S. 40:1299.64.36, signed and
18 dated by the patient and witnessed by at least two individuals who, in
19 the presence of the patient, attest that to the best of their knowledge and
20 belief the patient is capable, acting voluntarily, and is not being coerced
21 to sign the request.

22 C. One of the witnesses shall be a person who is not:

23 (1) A relative of the patient by blood, marriage or adoption;

24 (2) A person who at the time the request is signed would be
25 entitled to any portion of the estate of the qualified patient upon death
26 under any will or by operation of law;

27 (3) An owner, operator or employee of a health care facility

1 where the qualified patient is receiving medical treatment or is a
2 resident of the health care facility; or

3 (4) The patient's attending physician or consulting physician.

4 D. No request made except by a qualified patient and pursuant
5 to this Part shall be granted.

6 §1299.64.25. Attending physician's responsibilities

7 **R.S. 40:1299.64.25 is all proposed new law.**

8 When a patient seeks to make a request authorized in R.S.
9 40:1299.64.24, the attending physician shall:

10 (1) Make the initial determination of whether a patient has a
11 terminal disease, is capable, and has made the request voluntarily.

12 (2) Inform the patient of his medical diagnosis, his prognosis,
13 the potential risks associated with taking the medication to be
14 prescribed, the probable result of taking the medication to be
15 prescribed, and the feasible alternatives, including, but not limited to,
16 comfort care, hospice care and pain control.

17 (3) Refer the patient to a consulting physician for medical
18 confirmation of his diagnosis and his determination that the patient is
19 capable and acting voluntarily.

20 (4) Refer the patient for counseling if appropriate pursuant to
21 R.S. 40:1299.64.27.

22 (5) Request that the patient notify his next of kin of his decision
23 to seek medication to end his life. A patient who declines or is unable
24 to notify next of kin shall not have his request denied for that reason.

25 (6) Inform the patient that he has an opportunity to rescind the
26 request at any time and in any manner, and offer the patient an
27 opportunity to rescind at the end of the fifteen day waiting period

1 required by R.S. 40:1299.64.29.

2 (7) Verify, immediately prior to writing the prescription for
3 medication under this Part, that the patient is making an informed
4 decision.

5 (8) Fulfill the medical record documentation requirements in
6 R.S. 40:1299.64.30, and ensure that all appropriate steps are carried out
7 in accordance with this Part prior to writing a prescription for
8 medication to enable a qualified patient to end his life in a humane and
9 dignified manner.

10 §1299.64.26. Consulting physician confirmation

11 **R.S. 40:1299.64.26 is all proposed new law.**

12 Before a patient is qualified under this Part, a consulting
13 physician shall examine the patient and his relevant medical records
14 and confirm, in writing, the attending physician's diagnosis that the
15 patient is suffering from a terminal disease, and verify that the patient
16 is capable, is acting voluntarily, and has made an informed decision.

17 §1299.64.27. Counseling referral

18 **R.S. 40:1299.64.27 is all proposed new law.**

19 If in the opinion of the attending physician or the consulting
20 physician a patient may be suffering from a psychiatric or
21 psychological disorder, or depression causing impaired judgment, either
22 physician shall refer the patient for counseling. No medication to end
23 a patient's life in a humane and dignified manner shall be prescribed
24 until the person performing the counseling determines that the patient
25 is not suffering from a psychiatric or psychological disorder, or
26 depression causing impaired judgment.

27 §1299.64.28. Right to rescind request

R.S. 40:1299.64.28 is all proposed new law.

A patient may rescind his request at any time and in any manner without regard to his mental state. No prescription for medication under this Part may be written without the attending physician offering the qualified patient an opportunity to rescind the request.

§1299.64.29. Waiting periods

R.S. 40:1299.64.29 is all proposed new law.

No less than fifteen days shall elapse between the patient's initial oral request and the writing of a prescription under this Part. No less than forty-eight hours shall elapse between the patient's written request and the writing of a prescription under this Part.

§1299.64.30. Medical record documentation requirements

R.S. 40:1299.64.30 is all proposed new law.

All of the following shall be documented and filed in the patient's medical record:

(1) All oral requests by a patient for medication to end his life in a humane and dignified manner.

(2) All written requests by a patient for medication to end his life in a humane and dignified manner.

(3) The attending physician's diagnosis and prognosis, determination that the patient is capable, acting voluntarily, and has made an informed decision.

(4) The consulting physician's confirmation of the diagnosis and prognosis, and his verification that the patient is capable, acting voluntarily, and has made an informed decision.

(5) A report of the outcome and determinations made during counseling, if performed.

(6) The attending physician's offer to the patient to rescind his request at the time of the patient's second oral request pursuant to R.S. 40:1299.64.25.

(7) A note by the attending physician indicating that all requirements under this Part have been met and indicating the steps taken to carry out the request, including a notification of the medication prescribed.

§1299.64.31. Effect on construction of wills, contracts and statutes

R.S. 40:1299.64.31 is all proposed new law.

A. No provision in a contract, will or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his life in a humane or dignified manner, shall be valid.

B. No obligation owing under any currently existing contract shall be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his life in a humane and dignified manner.

§1299.64.32. Insurance or annuity policies

R.S. 40:1299.64.32 is all proposed new law.

The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication to end his life in a humane or dignified manner. Neither shall a qualified patient's act of ingesting medication to end his life in a humane and dignified manner have an effect upon a life, health, or accident insurance or annuity policy.

§1299.64.33. Construction

R.S. 40:1299.64.33 is all proposed new law.

Nothing in this Part shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing or active euthanasia. Actions taken in accordance with this Part shall not, for any purpose, constitute a crime.

§1299.64.34. Immunities

R.S. 40:1299.64.34 is all proposed new law.

A. Except as provided in R.S. 40:1299.64.35, no person shall be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this Part. This includes being present when a qualified patient takes the prescribed medication to end his life in a humane or dignified manner.

B. Except as provided in R.S. 40:1299.64.35, no professional organization or association, or health care provider, may subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership or other penalty for participating or refusing to participate in good faith compliance with this Part.

C. Except as provided in R.S. 40:1299.64.35, no request by a patient for, or provision by an attending physician of, medication in good faith compliance with the provisions of this Part shall constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator.

D. Except as provided in R.S. 40:1299.64.35, no health care provider shall be under any duty, whether by contract, by statute or by any other legal requirement to participate in the provision to a qualified patient of medication to end his life in a humane and dignified manner.

If a health care provider is unable or unwilling to carry out a patient's

request under this Part, and the patient transfers his care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

§1299.64.35. Penalties

R.S. 40:1299.64.35 is all proposed new law.

A. A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a recision of that request with the intent or effect of causing the patient's death shall be civilly liable and may be subject to criminal prosecution.

B. A person who coerces or exerts undue influence on a patient to request medication for the purpose of ending the patient's life, or to destroy a recision of such a request, shall be civilly liable and may be subject to criminal prosecution.

C. Nothing in this Part shall limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

D. The penalties in this Part shall not preclude criminal penalties applicable under other law for conduct which is inconsistent with the provisions of this Part.

§1299.64.36. Form of the request

R.S. 40:1299.64.36 is all proposed new law.

A request for a medication as authorized by this Part shall be substantially the following form:

"REQUEST FOR MEDICATION

TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

I, _____, am an adult of sound mind.

1 I am suffering from _____,
2 which my attending physician has determined is a terminal disease and
3 which has been medically confirmed by a consulting physician.

4 I have been fully informed of my diagnosis, prognosis, the
5 nature of the medication to be prescribed and potential associated risks,
6 the expected result, and the feasible alternatives, including comfort
7 care, hospice care and pain control.

8 I request that my attending physician prescribe medication that
9 will end my life in a humane and dignified manner.

10 **INITIAL ONE:**

11 _____ I have informed my family of my decision and taken
12 their opinions into consideration.

13 _____ I have decided not to inform my family of my decision.

14 _____ I have no family to inform of my decision.

15 I understand that I have the right to rescind this request at any
16 time.

17 I understand the full import of this request and I expect to die
18 when I take the medication to be prescribed.

19 I make this request voluntarily and without reservation, and I
20 accept full moral responsibility for my actions.

21 Signed:_____

22 Dated:_____

23 **DECLARATION OF WITNESSES**

24 We declare that the person signing this request:

25 (a) Is personally known to us or has provided proof of identity;

26 (b) Signed this request in our presence;

27 (c) Appears to be of sound mind and not under duress, fraud or

undue influence;

(d) Is not a patient for whom either of us is attending or consulting physician.

Witness /Date

Witness /Date

NOTE: One witness shall not be a relative (by blood, marriage or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death and shall not own, operate or be employed at a health care facility where the person is a patient or resident of the health care facility."

Section 2. R.S. 14:32.12(C) is hereby amended and reenacted to read as follows:

§32.12. Criminal assistance to suicide

* * *

C. The provisions of this Section shall not apply to any licensed physician or other authorized licensed health care professional who either:

(1) Withholds or withdraws medical treatment in accordance with the provisions of R.S. 40:1299.58.8.

(2) Prescribes, dispenses, or administers any medication, treatment, or procedure if the intent is to relieve the patient's pain or suffering and not to cause death.

(3) Prescribes, dispenses, or administers any medication pursuant to Part XXIV-C of Chapter 5 of Title 40 of the Louisiana Revised Statutes of 1950.

* * *

Section 3. This Act shall be effective January 1, 2000.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Tom Wade.

DIGEST

Provides that a person suffering from terminal disease has the fundamental right to request and obtain a prescription to end his life in a humane and dignified manner.

Provides for the form of the written request to obtain the prescription and for the procedure for executing the written request.

Provides that the attending physician make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily; inform the patient of his medical diagnosis, his prognosis, the potential risks associated with taking the medication to be prescribed, the probable result of taking the medication to be prescribed; and inform the patient of the feasible alternatives, including, but not limited to, comfort care, hospice care and pain control. Provides for referral of the patient to a consulting physician. Also provides for counseling if appropriate.

Provides for the right to rescind the request and for a waiting period.

Provides that only Louisiana residents can qualify to initiate the procedure. Provides for the effect of the written request on wills, contracts, insurance policies and annuity policies. Provides for immunities and penalties. Excepts prescribing, dispensing, or administering any medication pursuant to its provisions from the crime of criminal assistance to suicide.

Effective Jan. 1, 2000.

(Adds R.S. 40:1299.64.21-1299.64.36; amends R.S. 14:32.12(C))